

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

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MAY 28 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Olathe and Topeka, Kansas))

RM No. _____
MM Docket No. _____

To: Chief, Allocations Branch
Policy and Rules Division

PETITION FOR RULEMAKING

Bott Broadcasting Company ("BBC"), proposed assignee of the construction permit for Station KVVQ(FM), Olathe, Kansas, by its attorneys, hereby respectfully submits the instant petition for rulemaking to change the FM Table of FM Allotments for Olathe and Topeka, Kansas by (i) substituting Channel 222C3 for Channel 222A at Olathe, Kansas and (ii) substituting Channel 257A for Channel 223A at Topeka, Kansas. BBC also requests that the construction permit for Station KVVQ(FM) be modified to specify operation on the new channel. In support thereof, the following is shown:

There is currently pending before the Commission an application for the assignment of the construction permit of Station KVVQ(FM), Olathe, Kansas, from Marianne S. Harbart to BBC (FCC File No. BAPH-920515HC). Therefore, BBC has a cognizable interest in the upgrade of Station KVVQ(FM) and is eligible to file the instant petition. Additionally, attached hereto as Attachment

No. of Copies rec'd 04
List A B C D E

A is a statement from Ms. Harbart consenting to the filing of this petition.¹

BBC respectfully submits that an upgrade of Station KVVUQ(FM) would be in the public interest since it would result in more efficient use of the spectrum pursuant to Section 307(b) of the Communications Act. An upgrade from a Class A to a Class C3 facility would significantly increase Station KVVUQ(FM)'s coverage, bringing additional service to greater areas and populations, hereby making maximum and most efficient use of Channel 222.

As the attached engineering report (Attachment B hereto) prepared by Lahm, Suffa & Cavell, Inc. reflects, the proposed upgrade can be accomplished in compliance with the spacing requirements of 47 C.F.R. Section 73.207, provided that the reference geographic coordinates used are those of an available transmitter site located about 11 kilometers north of Olathe.² Use of a transmitter site at other than the community reference point is allowed under 47 C.F.R. Section 73.208(a)(2).³

BBC's upgrade proposal would be short spaced to the Channel 222A facility authorized for Station KDEE, Cameron, Missouri.

¹ A facsimile copy of Ms. Harbart's statement is attached hereto. This petition will be supplemented with the original signed statement once it is received by BBC's counsel.

² The upgrade location would be at 38° 58' 46" North Latitude; 94° 50' 44" West Longitude. See Attachment B.

³ As noted in the attached engineering statement, since the 3.16 millivolt per meter contour radius is about 23 kilometers for reference Class C3 facilities, and the available site is only about 11 kilometers north of the community of license, it can be concluded that the upgrade would adequately serve the community of license.

However, the licensee of KDEE, Cameron Radio, Inc., requested, and was recently authorized, to upgrade to a Class C2 on nonconflicting Channel 261 at Cameron. Thus, by Report and Order, 7 FCC Rcd 2192 (released March 31, 1992), the FM Table of Allotments was amended, effective May 15, 1992, to substitute Channel 261C2 for Channel 222A at Cameron, thereby eliminating that potential short spacing.

Moreover, the upgrade proposal would be short spaced to two pending applications for a new Class A FM station on Channel 223 at Topeka, Kansas. However, Channel 257A may be substituted for Channel 223A without a change in those applicants' commonly proposed transmitter site. Channel 257A at Topeka would be short spaced only to an upgrade application which was filed by Siebert Communications, Inc. ("Siebert"), licensee of Station KUTT, Fairbury, Nebraska.⁴ However, by Report and Order, 7 FCC Rcd 2318 (released April 13, 1992), Siebert was found to have consented to modification of KUTT's license to specify operation on Channel 258C1 and the FM Table of Allotments was amended to reflect that change, effective May 28, 1992.⁵ Thus, that potential short spacing also would be eliminated. Therefore, BBC's upgrade

⁴ The presently licensed KUTT channel, 257A, does not conflict with the channel 257A substitution at Topeka.

⁵ In that same Report and Order, 7 FCC Rcd 2318, Channel 257C2 was allotted to Clarinda, Iowa and the license of Station KKBZ modified to specify operation on that channel in lieu of Channel 291C2. The distance between the Clarinda Channel 257C2 facility and the Topeka applicants' common site is 165.7 kilometers. Under 47 C.F.R. Section 73.208 distances are rounded to the nearest whole kilometer, resulting in a separation of 166 kilometers. Thus, that spacing would comply with the requirements of 47 C.F.R. Section 73.207.

proposal would meet the Commission's separation distance requirements.

WHEREFORE, in light of the above, it is respectfully requested that the Commission institute a rulemaking proceeding looking towards the substitution, at Olathe, Kansas, of Channel 222C3 for the current Channel 222A and the substitution, at Topeka, Kansas, of Channel 257A for 223A. If this upgrade is approved, BBC (assuming it is the licensee or permittee of Station KVVUQ at the time) will promptly file an application to modify the station's facilities accordingly.


Respectfully submitted,

BOTT BROADCASTING COMPANY

By


HARRY C. MARTIN

By


CHERYL A. KENNY

Its Counsel

Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

May 28, 1992

ATTACHMENT A

CONSENT OF PERMITTEE

CONSENT OF PERMITTEE

I, Marianne S. Harbart, am the permittee of FM Broadcast Station KVUG, Olathe, Kansas (File No. BPH-880421NH). On May 15, 1992, an application for consent to assignment of the KVUG construction permit from me to Bott Broadcasting Company ("BBC") was filed with the Federal Communications Commission.

I hereby grant BBC permission to file, in its own name, a petition for rulemaking to upgrade the KVUG construction permit from Class A to Class C3. It is understood that the upgrade sought will be contingent upon the grant of the application for assignment of the KVUG construction permit from me to BBC.

Dated this 28 day of May, 1992.

Marianne S. Harbart
Marianne S. Harbart

ATTACHMENT B

ENGINEERING REPORT

Engineering Statement

PETITION FOR RULE MAKING

prepared for
Bott Broadcasting Company
Olathe, Kansas

Bott Broadcasting Company, proposed assignee of a permit to construct a new Class A FM broadcast station at Olathe, Kansas, hereby proposes upgrade of assigned FM broadcast channel 222A (92.3 MHz) to Class C3. To accomodate this improvement, it is proposed to substitute channel 257A (99.3 MHz) for vacant but applied for channel 223A (92.5 MHz) at Topeka, Kansas.

At Olathe, this facility upgrade complies with the requirements §73.207 of the Commission's rules, provided that the reference geographic coordinates used are those of an available transmitter site located approximately 11 kilometers north of Olathe. The 3.16 millivolt per meter contour radius is approximately 23 kilometers for reference Class C3 facilities, so it may be presumed that the proposed allotment upgrade will adequately serve the community of license. Use of a site not located at the community reference point is expressly permitted under §73.208(a)(2). The upgrade location is described by the geographic coordinates

38° 58' 46" North Latitude
94° 50' 44" West Longitude.

Table I is a channel spacing study detailing the distances between the proposed Class C3 operation at this site and other allotments and stations of importance. The separation distance requirements of Table A of §73.207(b)(1) of the FCC's Rules are met with respect to all but two known facilities. This upgrade proposal is short spaced to the channel 222A facility authorized to KDEE, Cameron, MO. However, KDEE was recently ordered¹ to upgrade to Class C2 on non-conflicting channel 261, so that short spacing is not relevant to the instant proposal. The facility contemplated at Olathe is also short spaced to commonly

^{/1} Report and Order, MM Docket No. 89-558; 7 FCC Rcd 2192; released 31 March 1992

sited, pending applications for a new Class A FM station at Topeka, Kansas,² to operate on channel 223. A channel substitution for that facility is proposed herein, so it presents no obstacle to approval of the instant upgrade.

It is also proposed to substitute channel 257A for channel 223A at Topeka, KS. Two applications for use of that allotment are now before the Commission's Review Board. Table II presents the separations between the site commonly specified by the Topeka applicants and other facilities of importance. Channel 257A at Topeka is short spaced only to the pending co-channel upgrade application of KUTT, Fairbury, NE. However, KUTT was recently ordered³ to move to channel 258C1 and its presently licensed channel 257A operation does not conflict with this substitution at Topeka, so that short spacing is not relevant to the instant request. The Topeka applicants' common site is separated from the co-channel facility recently allotted⁴ to KKBZ, Clarinda, IA, by 165.7 kilometers. Under §73.208, distances are rounded to the nearest whole kilometer, so the resulting distance (166 kilometers) complies with the requirement of §73.207 for this situation.

Accordingly, channel 222 may be upgraded to Class C3 at Olathe and channel 257A substituted for channel 223A at Topeka.

26 May 1992

Respectfully Submitted,



Karl D. Lahm, P.E.

3975 University Drive, Suite #450
Fairfax, Virginia 22030
202-332-0110 / 703-591-0110

D.C. Registration #8049
Virginia Registration #E10307

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- ^{/2} These applications bear File Numbers BPH-871124MG (granted in an *Initial Decision*) and BPH-871124MW (denied therein).
- ^{/3} Report and Order, MM Docket No. 89-595; 7 FCC Rcd 2318; released 13 April 1992
- ^{/4} That substitution was made in the same proceeding as the channel substitution at Fairbury. See Footnote 3, *supra*.

Table I

OLATHE CHANNEL STUDY

prepared for
Bott Broadcasting Company
Olathe, Kansas

Location: Olathe, KS
Channel Studied: 222C3
Frequency: 92.3 MHz.

Site Coordinates:
38° 58' 46" N.
94° 50' 44" W.

<u>Call Letters</u>	<u>City & State File Number</u>	<u>Chan. Status</u>	<u>Latitude Longitude</u>	<u>Bearing (deg)</u>	<u>Distance (km)</u>	<u>Required (km)</u>
KWJC	Liberty, MO BLED-810824AA	220A Lic.	39° 14' 52" 94° 24' 47"	51.3	47.8	42
KMOE	Butler, MO BLH-900814KB	221A Lic.	38° 14' 56" 94° 19' 18"	150.5	93.1	89
KDEE	Cameron, MO BMPH-900629IA	222A Lic.	39° 48' 11" 94° 13' 42"	30.0	105.8	142
KBUG	Osceola, MO BLH-900716KA	222A Lic.	38° 02' 12" 93° 34' 47"	133.1	152.1	142
(new)	Topeka, KS BPH-871124MG	223A App.	39° 07' 33" 95° 41' 08"	282.9	74.5	89
KAYX	Richmond, MO BLH-900806KC	223A Lic.	39° 11' 14" 93° 50' 03"	74.9	90.5	89
KSJQ	Savannah, MO BPH-900118MM	224C2 C.P.	39° 58' 34" 94° 58' 37"	354.2	111.2	56
KZOC	Osage City, KS BLH-890925KE	225C2 Lic.	38° 31' 47" 96° 05' 09"	245.5	118.8	56
(new)	St. Marys, KS BPED-910912MF	275C2 App.	39° 05' 33" 95° 47' 04"	279.1	82.3	17

Table II

TOPEKA CHANNEL STUDY

prepared for
Bott Broadcasting Company
Olathe, Kansas

Location: Topeka, KS
Channel Studied: 257A
Frequency: 99.3 MHz.

Site Coordinates:
39° 07' 33" N.
95° 41' 08" W.

<u>Call Letters</u>	<u>City & State File Number</u>	<u>Chan. Status</u>	<u>Latitude Longitude</u>	<u>Bearing (deg)</u>	<u>Distance (km)</u>	<u>Required (km)</u>
KLJC	Kansas City, MO BLED-910315KA	203C1 Lic.	39° 04' 24" 94° 29' 06"	92.8	104.0	22
KQRC	Leavenworth, KS BLH-871006KF	255C Lic.	39° 04' 14" 94° 34' 59"	93.3	95.6	95
KBUZ	El Dorado, KS BMPH-910102IA	256C1 C.P.	37° 56' 22" 96° 59' 20"	221.1	174.0	133
KKBZ	Clarinda, IA MM Docket 89-558	257C2 Alc.	40° 33' 12" 95° 07' 18"	16.7	165.7	166
KIKS-FM	Iola, KS BLH-7362	257A Lic.	37° 54' 04" 95° 24' 04"	169.6	138.2	115
KUTT	Fairbury, NE BLH-841025CP	257A Lic.	40° 11' 04" 97° 05' 15"	314.9	168.2	115
KUTT	Fairbury, NE BPH-900427IC	257C1 App.	40° 13' 55" 97° 18' 04"	312.2	185.2	200
KUTT	Fairbury, NE MM Docket 89-595	258C1 Alc.	40° 14' 41" 97° 03' 16"	317.2	171.0	133
KGZF	Emporia, KS BMPH-900416IC	258A App.	38° 24' 34" 96° 14' 09"	211.1	92.8	72
KLTH	Kansas City, MO BLH-900222KC	259C1 Lic.	39° 05' 01" 94° 30' 57"	92.3	101.3	95
KSKG	Salina, KS BLH-6653	260C1 Lic.	38° 47' 36" 97° 31' 33"	257.5	163.7	75

CERTIFICATE OF SERVICE

I, DeMara A. Magruder, do hereby certify that on this 28th day of May, 1992, copies of the foregoing **PETITION FOR RULEMAKING** were hand delivered or mailed, first-class postage prepaid, to the following:

Cameron Radio, Inc.
Station KDEE(FM)
Route 1, Box 29A
Cameron, MO 64429

Siebert Communications, Inc.
Station KUTT(FM)
Box 651
Fairbury, NE 68352

Margaret Escriva
17006 Silver Sky Lane
Houston, TX 77095

SpaceCom, Inc.
444 Pine Street
St. Paul, MN 55101


DeMARA A. MAGRUDER